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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**

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**DMAC81, LLC**

Plaintiff

v.

**AMCO Insurance Company**

Defendant

**Civil Action No. 2:19-cv-695-RMG**

**COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW, Plaintiff, DMAC81, LLC (“DMAC”), by and through undersigned counsel, and files this Complaint for Declaratory Judgment against AMCO Insurance Company (“AMCO”), Defendant, and states as follows:

**THE PARTIES AND JURISDICTION**

1. DMAC is a single-member South Carolina limited liability company. DMAC operates McAllister’s Deli franchises across South Carolina, Florida, and Georgia.
2. AMCO Insurance Company is a corporation organized under the laws of the State of Iowa with its principal place of business in Des Moines, Iowa.
3. Jurisdiction is proper under 28 U.S.C. §§ 1332 and 2201 because this matter involves an actual controversy among citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.
4. Venue is proper under 28 U.S.C. §§ 1391a because the insurance policies at issue were negotiated and issued to DMAC in the State of South Carolina.

5. This Court may exercise personal jurisdiction over the parties in accordance with SC Code § 36-2-803 because the cause of action arises from the parties' transacting business in South Carolina.

6. An actual controversy exists between the parties in this action regarding the obligations of AMCO to provide defense and indemnity to DMAC in connection with a lawsuit captioned *Huong M. Lieu a/k/a Heidi Lieu, Individually and as Administrator of the Estate of Thanh T. Nguyen v. Gary Kai R. Cummings and DMAC81, LLC.*, Superior Court of Bibb County, Georgia Case No.: 2018-CV-069101 (the "Lieu Lawsuit").

### **FACTUAL BACKGROUND**

7. AMCO issued a Commercial Auto Policy, Policy No.: ACP BAA 3038083498, to DMAC as the named insured with an effective date of November 14, 2017 through November 14, 2018. *See Exhibit A* (Commercial Auto Policy).

8. AMCO also issued a Commercial Umbrella Liability Policy, Policy No.: ACP CAA 3038083498, to DMAC as the named insured with the same effective dates. *See Exhibit B.* (Commercial Umbrella Liability Policy). (Collectively, the Commercial Auto Policy and the Commercial Umbrella Liability Policy constitute the "AMCO Policies").

9. On January 17, 2018, an employee of one of DMAC's McAllister's Deli locations was involved in a fatal automobile accident near Macon, Georgia that resulted in the deaths of Tuan M. Nguyen and Thanh T. Nguyen.

10. In July 2018, DMAC received correspondence from attorneys for the estates of Tuan M. Nguyen and Thanh T. Nguyen (the "Litigation Correspondence").

11. DMAC sent the Litigation Correspondence to AMCO, through DMAC's insurance broker Arthur J. Gallagher, in late July 2018.

12. On information and belief, upon receipt of the Litigation Correspondence, AMCO opened a claim related to the Accident and assigned a single claim number: 5999456H.

13. In early August 2018, AMCO provided information to the attorneys for the estates of Tuan M. Nguyen and Thanh T. Nguyen regarding the AMCO Insurance Policies.

14. In mid-August 2018, companion lawsuits were filed against DMAC relating to the deaths of Tuan M. Nguyen and Thanh T. Nguyen. *See Exhibit C* (Complaint in *Hong Hua Nguyen v. Gary Kai R Cummings, et. al.*, Superior Court of Bibb County, Case No.: 2018-CV-069059) (the “Nguyen Lawsuit”); *Exhibit D* (Complaint in *Huong M. Lieu v. Gary Kai R. Cummings and DMAC81, LLC*, Superior Court of Bibb County, Case No.: 2018-CV-069101) (the “Lieu Lawsuit”).

15. A responsive pleading was filed on DMAC’s behalf in the Nguyen Lawsuit.

16. No responsive pleading was filed on DMAC’s behalf in the Lieu Lawsuit, and a default judgment has been entered against DMAC.

**DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201**

17. The Lieu Lawsuit contains allegations that trigger AMCO’s duty to defend and indemnify DMAC under the AMCO Policies.

18. AMCO has issued a supplemental reservation of rights letter asserting that DMAC failed to provide notice of the Lieu Lawsuit and that this alleged failure negates AMCO’s responsibility to provide defense and indemnity in the Lieu Lawsuit. *See Exhibit E* (October 31, 2018 Letter).

19. DMAC disputes that it failed to provide notice of the Lieu Lawsuit and asserts that AMCO should provide DMAC with defense and indemnity in the Lieu Lawsuit under the AMCO Policies.

20. The Lieu Lawsuit requires immediate attention on behalf of the DMAC, and, AMCO's refusal to defend and indemnify DMAC in the Lieu Lawsuit may have immediate prejudicial effect on DMAC.

WHEREFORE, DMAC seeks a declaration that AMCO has a duty to defend and indemnify DMAC in the Lieu Lawsuit under the AMCO Policies.

Respectfully submitted,

s/ Ryan L. Beaver

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